

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

In re:)	
)	
GERALD BARNHART)	Case No. 03-43371
)	
Debtor.)	
)	
GERALD BARNHART,)	
)	
Plaintiff,)	
vs.)	Adversary Proceeding No. 04-5061
)	
AMERICAN STERLING BANK,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

A bankruptcy court may exercise its discretion to voluntarily abstain from a case *sua sponte*, i.e., on its own accord, without a motion or hearing. *Carver v. Carver*, 954 F.2d 1573, 1579 (11th Cir. 1992). On December 27, 2004, the Court entered an order in the main case granting the Trustee's notice to abandon this adversary proceeding. Because the estate no longer has an interest in the outcome of the lawsuit and the remaining counts¹ of the lawsuit are based entirely on state law, voluntary abstention is appropriate. *See In re Williams*, 256 B.R. 885, 893-94 (B.A.P. 8th Cir. 2001) (listing factors considered by courts to determine whether to abstain under 28 U.S.C. § 1331(c)(1)). Therefore, it is

ORDERED that pursuant to 28 U.S.C. § 1334(c) the Court exercises its discretion to voluntarily abstain in this adversary proceeding. It is

FURTHER ORDERED that this matter is dismissed without prejudice.

¹ The Court dismissed Count I of the lawsuit on August 24, 2004. The remaining counts (Counts II and III) seek damages for breach of contract and fraudulent misrepresentation.

SO ORDERED this 10th day of January 2005.

/s/ Jerry W. Venters
United States Bankruptcy Judge

A copy of the foregoing was served
electronically or conventionally to:
Gerald Eugene Barnhart
Scott B. Haines
Heather S. Esau Zerger